

§ 201.31

37 CFR Ch. II (7-1-08 Edition)

(4) One copy, with the appendix, if applicable, shall be submitted to the primary auditor.

(h) *Retention of report.* The Register of Copyrights will retain his or her copy of the verifying auditor's report for three years following the date the copy of the verifying auditor's report is filed.

(i) *Costs of verification.* The joint interested copyright parties who requested the verification procedure shall pay the fees of the verifying auditor and the primary auditor for their work performed in connection with the verification procedure, except, if the verification procedure results in a judicial determination or the filer's agreement that royalty payments were understated on the Annual Statement of Account, then,

(1) if the amount is less than five percent (5%) of the amount stated on the Annual Statement of Account, that amount shall first be used to pay the fees of the verifying auditor and the primary auditor, and any remaining amount plus any applicable interest on the total amount shall be deposited, allocated by the filer's elected fiscal year, with the Register of Copyrights, or

(2) if the amount is equal to or greater than five percent (5%) of the amount stated on the Annual Statement of Account, the filer shall pay the fees of the verifying auditor and the primary auditor, and, in addition, shall deposit the amount found to be due plus any applicable interest on the total amount, allocated by the filer's elected fiscal year, with the Register of Copyrights.

(j) *Independence and qualifications of verifying auditor.* (1) The verifying auditor shall be qualified and independent as defined in this section. If the filer has reason to believe that the verifying auditor is not qualified or independent, it shall raise the matter with the joint interested copyright parties before the commencement of the verification procedure, and if the matter is not resolved, it may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the verifying auditor's State Board of Accountancy while the verification procedure is being performed.

(2) A verifying auditor shall be considered qualified if he or she is a certified public accountant or works under the supervision of a certified public accounting firm.

(3) A verifying auditor shall be considered independent if:

(i) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules and Interpretations of such Code applicable generally to attest engagements (collectively, the "AICPA Code"); and

(ii) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

[61 FR 30813, June 18, 1996]

§ 201.31 Procedures for copyright restoration in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement.

(a) *General.* This section prescribes the procedures for submission of Statements of Intent pertaining to the restoration of copyright protection in the United States for certain motion pictures and works embodied therein as required by the North American Free Trade Agreement Implementation Act (NAFTA) of December 8, 1993, Public Law No. 103-182. On or after January 3, 1995, the Copyright Office will publish in the FEDERAL REGISTER a list of works for which potential copyright owners have filed a complete and timely Statement of Intent with the Copyright Office.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Effective filing.* To be effective a Statement of Intent must be complete and timely.

(2) *Eligible work* means any motion picture that was first fixed or published in Mexico or Canada, and any work included in such motion picture that was first fixed or published with this motion picture, if the work entered the public domain in the United

States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by 17 U.S.C. 401, 402, or 403, the absence of which has not been excused by the operation of 17 U.S.C. 405, as such sections were in effect during that period.

(3) *Fixed* means a work ‘fixed’ in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is ‘fixed’ for purposes of this title if a fixation of the work is being made simultaneously with its transmission. 17 U.S.C. 101

(4) *Potential copyright owner* means the person who would have owned any of the exclusive rights comprised in a copyright in the United States in a work eligible for copyright restoration under NAFTA, if the work had not fallen into the public domain for failure to comply with the statutory notice requirements in effect at the time of first publication, or any successor in interest to such a person.

(5) *Published* means distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

(c) *Forms.* The Copyright Office does not provide Statement of Intent forms for the use of potential copyright owners who want to restore copyright protection in eligible works.

(d) *Requirements for effective Statements of Intent.* (1) The document should be clearly designated as a “Statement of Intent to restore copyright protection in the United States in accordance with the North American Free Trade Agreement”.

(2) Statements of Intent must include:

(i) The title(s) of the work(s) for which copyright restoration is sought,

including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;

(ii) The nation of first fixation;

(iii) The nation of first publication;

(iv) The date of first publication;

(v) The name and mailing address (and telephone and telefax, if applicable) of the potential copyright owner of the work;

(vi) The following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

(insert Mexico or Canada) and understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. copyright law. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: _____

Name (Printed or Typed): _____

Date: _____

(3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying work covered and give the title if different from the title of the motion picture.

(4) More than one motion picture may be included in a single Statement of Intent provided the potential copyright owner is the same for all the motion pictures. The information required in § 201.31 (d)(2)(i) through (d)(2)(iv) must be given for each work.

(5) Sports programs that do not have a title can be identified in a Statement of Intent by giving the sporting event, the team names and the date (month, day and year).

(6) Statements of Intent must be received in the Copyright Office on or before December 31, 1994.

(7) Statements of Intent must be in English and either typed or legibly printed by hand, on 8 1/2 inch by 11 inch white paper.

(e) *Fee.* The Copyright Office is not requiring a fee for the processing of Statements of Intent.

(f) *Effective date of restoration of copyright protection.* (1) Potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office will have copyright protection restored in these works effective January 1, 1995.

(2) The new section 17 U.S.C. 104A(c) created by the NAFTA Implementation Act gives a one year exemption to U.S. nationals or domiciliaries who made or acquired copies of a motion picture or its contents before December 8, 1993, the date of enactment of the implementing act. These individuals or entities may continue to sell, distribute, or perform publicly such works without liability for a period of one year following the Copyright Office's publication in the FEDERAL REGISTER of the list of the works determined to be properly qualified for protection and for which complete and timely Statements of Intent have been filed.

(g) *Registration of works whose copyright has been restored.* After January 1, 1995, the Copyright Office encourages potential copyright owners to make voluntary copyright registration in accordance with 17 U.S.C. 408 for works that have had copyright restored in accordance with NAFTA.

[59 FR 12164, Mar. 16, 1994, as amended at 59 FR 58789, Nov. 15, 1994; 60 FR 50420, Sept. 29, 1995; 66 FR 34373, June 28, 2001]

§ 201.32 [Reserved]

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

(a) *General.* This section prescribes the procedures for submission of Notices of Intent to Enforce a Restored Copyright under the Uruguay Round Agreements Act, as required in 17 U.S.C. 104A(a). On or before May 1, 1996, and every four months thereafter, the Copyright Office will publish in the FEDERAL REGISTER a list of works for which Notices of Intent to Enforce have been filed. It will maintain a list of these works. The Office will also make a more complete version of the information contained in the Notice of

Intent to Enforce available on its automated database, which can be accessed over the Internet.

(b) *Definitions*—(1) *NAFTA work* means a work restored to copyright on January 1, 1995, as a result of compliance with procedures contained in the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law No. 103-182.

(2) *Reliance party* means any person who—

(i) With respect to a particular work, engages in acts, before the source country of that work becomes an eligible country under the URAA, which would have violated 17 U.S.C. 106 if the restored work had been subject to copyright protection and who, after the source country becomes an eligible country, continues to engage in such acts;

(ii) Before the source country of a particular work becomes an eligible country, makes or acquires one or more copies or phonorecords of that work; or

(iii) As the result of the sale or other disposition of a derivative work, covered under the new 17 U.S.C. 104A(d)(3), or of significant assets of a person, described in the new 17 U.S.C. 104 A(d)(3) (A) or (B), is a successor, assignee or licensee of that person.

(3) *Restored work* means an original work of authorship that—

(i) Is protected under 17 U.S.C. 104A(a);

(ii) Is not in the public domain in its source country through expiration of term of protection;

(iii) Is in the public domain in the United States due to—

(A) Noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(B) Lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(C) Lack of national eligibility; and

(iv) Has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the